

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 462 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI PARSOTTAMBHAI VALAND

Versus

BHAGYESH JHA, IAS, DISTRICT MAGISTRATE,

Appearance:

MR MIG MANSURI for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/03/2000

ORAL JUDGEMENT

#. The District Magistrate, Kheda at Nadiad, passed an order on August 31, 1999 in exercise of powers under section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the detenu under the provisions of the PASA Act.

#. The grounds of detention indicate that the detaining authority considered six offences registered against the detenu under the Bombay Prohibition Act. The authority also considered the statements of anonymous witnesses involving the detenu in bootlegging activities and use of force in pursuing such activities. The detaining authority came to conclusion that the detenu is a "bootlegger" as defined under the PASA Act, and therefore, he is required to be immediately prevented from pursuing his illegal and anti-social activities. While considering the statements of anonymous witnesses, the detaining authority felt satisfied that the fear expressed by the witnesses qua the detenu is genuine and therefore, the powers under section 9(2) of the PASA Act are required to be exercised. For this purpose, the detaining authority relied upon the verification made by Dy.S.P. in respect of the statements of these witnesses. The detaining authority also recorded satisfaction about the need for exercise of powers under the PASA Act and passed the order.

#. The detenu challenges the order of detention on various grounds. However, Mr. Mansuri has restricted his argument to the ground of improper use of powers under Section 9(2) of the PASA Act. In this regard, he submitted that the detaining authority has not personally verified the statements of five anonymous witnesses. The detaining authority has relied only on verification of the statements made by Dy.S.P., Nadiad. According to Mr. Mansuri, the verification by Dy.S.P. does not seem to be at the behest of the detaining authority and there is no communication between the Dy.S.P. and the detaining authority in respect of subjective satisfaction. What is stated by the witnesses in verification by Dy.S.P. is repetition of the statements so far as the apprehension part is concerned. Mr. Mansuri, therefore, urged that the subjective satisfaction recorded by the detaining authority cannot be considered as genuine and the exercise of powers under Section 9(2) of the PASA Act, therefore, is improper. This exercise of powers under section 9(2) of the PASA Act has infringed the right of the detenu of making an effective representation and therefore, the petition may be allowed.

#. Mr.K.T. Dave, learned AGP has opposed this petition. No affidavit -in-reply is filed on behalf of the detaining authority.

#. Considering the contentions raised before this Court, there appears to be substance in the arguments advanced

by the learned counsel Mr. Mansuri. It is very clear from the language employed in the grounds of detention that the detaining authority does not claim to have personally verified the statements of anonymous witnesses. The detaining authority has relied upon the verification made by the Dy.S.P. The tenor of grounds of detention does not indicate that the verification by Dy.S.P. was at the behest of the detaining authority, as such the detaining authority has relied only on the statements produced by the sponsoring authority which were verified by the Dy.S.P. The exercise of personally satisfying itself about the genuineness and correctness of the fear expressed by the witnesses qua the detenu and the need for exercise of powers under section 9(2) of the PASA Act in public interest have not been undertaken by the detaining authority. The exercise of power under section 9(2) of the PASA Act is, therefore, improper. It has affected the right of the detenu of making an effective representation which would vitiate the detention. The petition, therefore, deserves to be allowed on this ground alone.

#. This petition is allowed. The impugned order of detention dated August 31, 1999 is hereby quashed and set aside. The detenu - Rameshbhai Parsottambhai Valand is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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